

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6080 of 1983

Date of decision: 2-9-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SOMABHAI MOHANBHAI WAGHELA

Versus

BANK OF BARODA

Appearance:

MR Girish Patel for Petitioners

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/09/96

ORAL JUDGEMENT

The petitioner who was holding the post of Cash Clerk at Mehsana Branch of the respondent Bank has filed this writ petition challenging the order dated 12-12-1981 passed by the disciplinary authority & Regional Manager (Mehsana Region), Ahmedabad, terminating his services on the misconduct of misappropriation of the bank's money. The petitioner was appointed as Cash Clerk on 22-9-1975

in the respondent Bank. He was transferred to this post on 22nd January, 1976. While he was posted at Mehsana Branch of the respondent Bank he was served with charge sheet by memo dated 10th January, 1979. Inquiry was conducted on the charges framed against the petitioner under the aforesaid charge sheet. The charges framed against the petitioner were found proved by the inquiry officer. Inquiry report was submitted on 16th December, 1980. The disciplinary authority has accepted the inquiry report and under order dated 12-12-1981 terminated the services of the petitioner.

2. The respondent bank has also launched prosecution against the petitioner in connection with misappropriation of the bank's money. Criminal case being No.304 of 1979 was registered against the petitioner in the court of Judicial Magistrate (First Class), Mehsana for the offence under section 409 of I.P.C. In the criminal case the petitioner was acquitted by the court. A copy of the judgment of the criminal court has been submitted by the petitioner at annexure-D to the petition. The respondents have not filed reply to the special civil application.

Heard the learned counsel for the petitioner, and perused the file.

3. Learned counsel for the petitioner contended that in the criminal case on the same charges the petitioner has been acquitted and as such disciplinary proceedings should not have been taken against him. In support of this contention learned counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of Sulekh Chand & Salek Chand vs. Commissioner of Police, JT 1995(1) SC 23. He has drawn my attention to the charge sheet and also the decision given by the criminal court and contended that the charges are of misappropriation both in the departmental inquiry and in the criminal case. In the criminal case, on the same evidence the petitioner has been acquitted.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. In the case of Sulekh Chand & Salek Chand (supra) the appellant therein was acquitted on merits of the charge under section 5(2) of the Prevention of Corruption Act. The appellant in the aforesaid case before the Supreme Court was not given promotion on the sole ground of prosecution under section 5(2) of the Prevention of Corruption Act pending against him. In the aforesaid case the Supreme Court has noticed the fact

that departmental inquiry initiated against the appellant itself was dropped by the respondents therein. In the said case the Supreme Court has observed in para 2 of the judgment that once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental inquiry is obviated. The Supreme Court further held that it is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self same allegations and take appropriate disciplinary action. The Supreme Court further observed that in the case before it the acquittal was on merits.

5. In the present case as many as five charges were there against the petitioner. Charge No.5 reads as follows:

"5. On 13th June 1978 you reported Cash shortage of Rs.4800/-. The amount of the cash shortage was made good by you in two installments of Rs.1800/and Rs.3000/- on 27th June, 1978 and 9th August, 1978 respectively."

The petitioner was found guilty of gross negligence in discharge of his duties. In the criminal case the petitioner has been acquitted as in the opinion of the criminal court the prosecution failed to prove the charge against the petitioner beyond reasonable doubt. The standard of proof in the departmental inquiry and criminal case is different. In criminal case accusation has to be proved beyond reasonable doubt whereas in the departmental inquiry the standard of proof is that of preponderance and probability. Reference in this respect may have to be made to the decision of the Supreme Court in the case of Union of India vs. Sardar Bahadur, reported in 1972(2) SLR 218. In the case of Kusheshwar Dubey vs. Bharat Coaking Coal Ltd., reported in 1988(4) SCC 319 the Supreme Court, on the question whether disciplinary proceedings and criminal proceedings can be initiated simultaneously against a delinquent officer, held that no general rule can be laid down. The Supreme Court in that case further held that in a case of such nature in case proper case is made out the court may stay the departmental proceedings pending criminal case. Charges in the present case framed against the petitioner are not the same as tried to be projected by the counsel for the petitioner. Offence under section 409, 471 and 211 I.P.C. have different ingredients. Charges in the departmental inquiry against the petitioner were of gross negligence in discharge of duties which may or may not involve serious loss to the bank. It has been found that

the petitioner had admitted in the inquiry that on the paying slip of Rs.10,000/- to be credited to the account of the firm there is his signature. It is also the case, on which there is no dispute, that cash was found short of Rs.4800/- which has been reported against the petitioner on 13th June, 1978. The petitioner had made good by making payment of the said amount in two installments of Rs.1800/- and Rs.3000/- on 26-8-1978 and 9-8-1978 respectively. The finding of fact which has been recorded by the inquiry officer has to be accepted as correct. This court will not sit in appeal over those findings of the inquiry officer as an appellate authority. Reference in this respect may have to be made to decision of the Supreme Court in the case of Govt. of Tamil Nadu vs. A. Rajagopalan, reported in AIR 1995 SC 561. This court will not go into the correctness of the findings of the inquiry officer and the disciplinary authority, and the same has to be accepted as correct, if the petitioner has not challenged the finding of the inquiry officer and the disciplinary authority as perverse. This court will not go into the correctness of the charges also. In the departmental inquiry there is no charge of misappropriation. It is a case of negligence. No interference by this court with the order made by the disciplinary authority for removal of the petitioner from service is called for.

6. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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